


September 8, 2005

MEMORANDUM

TO: Karen Orlansky, Director
Office of Legislative Oversight

FR: Charles R. Loehr, Director 
Montgomery County Department of Park and Planning

RE: Responses to Certain Legal Issues Related to OLO's Clarksburg
Town Center Fact-Finding Review

Attached please find the Commission's response to Question 3 as set forth in your Memorandum to me dated August 1, 2005. The answers to the remaining questions are forthcoming.

Attachment

Cc: Adrian R. Gardner, General Counsel
Michele Rosenfeld, Associate General Counsel

lots which may be occupied; (ii) the size of lots, yards, courts, and other open spaces; (iii) the erection of temporary stands and structures; (iv) the density and distribution of population; (v) the location and uses of buildings and structures and units therein for trade, industry, residence, recreation, agriculture, public activities, and other purposes; and (vi) the uses of land, including surface, subsurface, and air rights therein, for building, trade, industry, residence, recreation, agriculture, forestry, or other purposes.

Maryland Annotated Code art.28 §8-101(b)(2). Maryland Annotated Code art.28 §8-104(a)(1) (Zoning regulation amendments) further provides that “each district council from time to time may amend its regulations or any regulation . . . in accordance with procedures established in the respective zoning ordinances.”

The District Council, through Chapter 59 of the Montgomery County Code (“Code”) has adopted a Zoning Ordinance that regulates the types of land use areas described in the Regional District Act. The District Council establishes development standards through the adoption of text amendments, which process is set forth in Code §59-H-9 (Text Amendments).

Specific to the RMX zones, developments reviewed under the standard method of development in the RMX zones are subject to precise numerical maximum height limits. Code §59-C-10.2.1 (Standard Method of development regulations). For example, any building in a standard method project developed in the RMX-1, RMX-2, and RMX-3 Zones—which, pursuant to Code §59-C-10.2.1.1.1, must comply with the standards and requirements of the R-200 Zone—may be constructed, by right, to a height of 50 feet. See Code §59-C-1.327. The latter 50-foot height restriction also applies to any building in a standard method project developed in the RMX-1/TDR, RMX-2/TDR, and RMX-3/TDR Zones—which, pursuant to Code §59-C-10.2.1.1.2, must comply with the standards and requirements of the R-200/TDR Zone. See Code §59-C-1.332(b). Additionally, building in a standard method project developed in the RMX-2C and RMX-3C Zones—which, pursuant to Code §59-C-10.2.1.1.3, must comply with the standards and requirements of the standard method of development in the C-2 Zone—may be constructed, under certain conditions, to a height of 75 feet. Code §59-C-4.351.

For projects developed under the optional method of development in the RMX Zones, the Code requires these projects to be “in accordance with the provisions of Section 59-C-10.3, as well as the density, numerical limitations, and other guidelines contained in the applicable master plan approved by the District Council.” Code §59-C-10.2 and §59-C-10.2.2 (setting forth identical language to that quoted in the immediately preceding citation). As such, the Zoning Ordinance contains maximum building heights for all development in the RMX Zones to the extent that applicable master plans provide guidelines for these heights. In the case of the Clarksburg Town Center development, the master




THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION
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RESPONSES TO OLO QUESTION NO. 3.

- 3. Zone Requirements.** *Is there a standard set of threshold requirements or items that a zone must address to be legally sufficient? For example, does State or County law require a zone, such as the RMX zone, to either contain a specific maximum height or a methodology for setting a maximum building height? Identify those zones, other than the RMX zone, that do not have specific building height limits or other specific development standards, such as setback or density limits. For each such zone, who is responsible for establishing the development standard, and what is the methodology for doing so?*

Response:

I am not aware of any provision of State or County Law that sets forth "a standard set of threshold requirements or items that a zone must address to be legally sufficient." The Maryland Annotated Code art.28¹ §8-101 (District Council powers and functions) does delegate to the District Council the authority to adopt a zoning code that can regulate as follows:

the location, height, bulk, and size of buildings, other structures, and units therein, building lines, minimum frontages, depths and areas of lots, and percentages of lots which may be occupied; (ii) the size of lots, yards, courts, and other open spaces; (iii) the erection of temporary stands and structures; (iv) the density and distribution of population; (v) the location and uses of buildings and structures and units therein for trade, industry, residence, recreation, agriculture, public activities, and other purposes; and (vi) the uses of land, including surface, subsurface, and air rights therein, for building, trade, industry, residence, recreation, agriculture, forestry, or other purposes.

The law further delegates to the District Council the authority to establish the development standards for all zones in Montgomery County as follows:

[e]xcept as otherwise provided in §§8-126 and 8-127 of this subtitle, each district council, respectively, in accordance with the conditions and procedures specified in this article, may by ordinance adopt and amend the text of the zoning ordinance and may by resolution or ordinance adopt and amend the map or maps accompanying the zoning ordinance text to regulate, in the portion of the regional district lying within its county, (i) the location, height, bulk, and size of buildings, other structures, and units therein, building lines, minimum frontages, depths and areas of lots, and percentages of

¹ "Regional District Act."

lots which may be occupied; (ii) the size of lots, yards, courts, and other open spaces; (iii) the erection of temporary stands and structures; (iv) the density and distribution of population; (v) the location and uses of buildings and structures and units therein for trade, industry, residence, recreation, agriculture, public activities, and other purposes; and (vi) the uses of land, including surface, subsurface, and air rights therein, for building, trade, industry, residence, recreation, agriculture, forestry, or other purposes.

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plan does provides height limitations not in specific numerical terms, but in general terms through a recommendation of the maximum number of stories permitted.